



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

ma

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/419,664 10/15/99 FARIES

D C0240.MSI

QM02/0921
EPSTEIN, EDELL, SHAPIRO, & FINNAN, LLC
1901 RESEARCH BOULEVARD
SUITE 400
ROCKVILLE MD 20850-3164

EXAMINER

PELHAM, T

ART UNIT

PAPER NUMBER

3742

DATE MAILED:

09/21/00

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/419,664	Applicant(s) Faries et al
Examiner Joseph Pelham	Group Art Unit 3742

Responsive to communication(s) filed on 10 May 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-34 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) 2, 3, and 9-33 is/are allowed.

Claim(s) 1, 4-8, and 34 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 6

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3742

1. The examiner acknowledges Applicant's submission of the amendment filed 8/3/00 and supplemental IDS filed 5/10/00. Claims 1-34 remain pending.

Claim Rejections - 35 USC § 112

2. Claim 34 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 34 recites the limitation "said housing" in line 3. There is no antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. Claims 1 and 4-8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4605840 to Koopman. Referring to Figures 1 and 3, and column 3, lines 18-41, Koopman discloses a plurality of drawers independently heated over a portion of one wall by sensor-based control, and heat inherently transmitted to adjacent drawer walls.

The examiner again urges that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claim Rejections - 35 USC § 103

4. Claims 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4910386 to Johnson in view of U.S. Patent 5276310 to Schmidt et al.

Referring to figures 1 & 2, and column 3, line 41, through column 4, line 27, Johnson discloses a heated drawer for receiving medical items, and heat is inherently conducted from any wall, the bottom in particular, to secondary walls. Johnson does not disclose applying heat directly to one wall.

However, Schmidt et al, at figure 4 and column 4, lines 40-45, discloses applying heat directly to one drawer wall to heat tools contained therein. It would have been obvious to one of ordinary skill in the art to adapt the heater means of Schmidt et al to the warming device of Johnson to enhance heating efficiency.

Allowable Subject Matter

5. Claims 2, 3, and 9-33 are allowed.

Art Unit: 3742

Response to Arguments

6. Applicant's arguments with respect to claims 1 and 4-8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Any inquiry concerning this communication should be directed to Joseph Pelham at telephone number (703) 308-1709, or fax (703) 308-7764.



Joseph Pelham
Primary Patent Examiner
Art Unit 3742

JP

September 20, 2000